

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC MAIL SECTION

JUL 5 6 12 PM '00

In the Matter of

Amendment of Section 73.202(b),
FM Table of Allotments,
FM Broadcast Stations.
Angel Fire, Chama, Taos, New Mexico)

MM Docket No. 99-116
RM-9536

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 21, 2000

Released: June 30, 2000

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a *Notice of Proposed Rulemaking and Order to Show Cause* ("NPRM")¹ issued at the request of Alpine Broadcasting Limited Partnership ("petitioner") permittee of Station KLAB(FM), Taos, New Mexico, and licensee of Station KKIT(FM), Angel Fire, New Mexico. Petitioner requested the substitution of Channel 256C for 260C at Taos, New Mexico, and the modification of its construction permit for Station KLAB(FM) to specify the alternate Class C channel. It also requested the substitution of Channel 260C2 for Channel 256C2 at Angel Fire, New Mexico, the modification of Station KKIT(FM)'s license to specify the alternate channel. To accommodate these changes, petitioner requested the substitution of Channel 221A for Channel 255A at Chama, New Mexico, and the modification of the construction permit² originally issued to Tony Gonzales, now held by On Top Broadcasting, Inc. ("On Top"),³ to specify the alternate channel. Petitioner pledged to reimburse the permittee of the station at Chama for its reasonable expenses in making the channel change. In response to the *Order to Show Cause*, KNXX, Inc., On Top's predecessor, filed comments and "counterproposal"⁴ suggesting an alternate channel at Chama. KNXX, Inc. stated that it had no objection to the balance of petitioner's proposal. Petitioner filed comments reiterating its interest in Channel 260C at Taos and

¹ 14 FCC Rcd 6269 (1999).

² See File No. BPH-961115MM.

³ On Top superceded KNXX, Inc., which had superceded the original permittee, Tony Gonzales, as permittee of the construction permit at Chama. On Top became permittee pursuant to an application for assignment of construction permit granted on October 1, 1999 (See File No. BAPH-19990816GL), which has been consummated. The station now uses call letters KFLH.

⁴ Although KNXX, Inc. refers to its pleading as a counterproposal, it is not mutually exclusive with the original proposal and therefore is not technically a counterproposal. See *Report and Order* in MM Docket No. 96-171 (Indian Springs, Nevada, Mountain Pass, California, Kingman, Utah and St. George, Utah), 14 FCC Rcd 10568, 10574; See also *Memorandum Opinion and Order* in MM Docket 84-231 (Implementation of BC Docket 80-90 to Increase the Availability of FM Broadcast Assignments, 5 FCC Rcd 931, n. 5 (1990). Therefore, we consider it merely an alternate channel suggestion in accordance with the Appendix to the *Notice*, and have not placed it on public notice.

Channel 260C2 at Angel Fire.

2. Petitioner stated in its petition for rulemaking that it proposed the channel swap between the Taos and Angel Fire stations to allow the Taos station to relocate its transmitter site from an unusable site without electrical power to an existing transmitter site on San Antonio Mountain. Petitioner also stated that the swap could be effectuated in accordance with the Commission's minimum distance separation requirements at the respective sites specified in each station's construction permit and license.

3. With respect to the channel substitution at Chama, we note that KNXX, Inc. requested that the Commission substitute Channel 240A at Chama rather than Channel 221A as stated in the Notice. We received no comments in opposition to this request. A Commission engineering analysis shows that Channel 240A is available for allotment at Chama.

4. Therefore, we will grant petitioner's request to substitute Channel 256C for Channel 260C3 at Taos and amend its construction permit to specify the higher class channel, and substitute Channel 260C3 for Channel 256C3 at Angel Fire, New Mexico, and modify Station KKIT(FM)'s license to specify the equivalent class channel. We also grant On Top's alternate channel suggestion for Chama, New Mexico, and substitute Channel 240A for Channel 255A at Chama, and modify the construction permit for Station KFLH(FM). These channel substitutions will permit the institution of class C FM service at Taos. Channel 256C can be allotted at Taos in accordance with the Commission's minimum distance separation requirements at petitioner's specified site with a site restriction of 60.3 kilometers (37.4 miles) northwest.⁵ Channel 260C2 can be allotted to Angel Fire at Station KKIT(FM)'s licensed site in compliance with the Commission's minimum distance separation requirements.⁶ Channel 240A can be allotted at Chama in accordance with the Commission's minimum distance separation requirements at the site specified in the construction permit now held by On Top at Chama.⁷

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective August 14, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Taos, New Mexico	256C, 270C1
Angel Fire, New Mexico	260C2
Chama, New Mexico	240A

6. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this *Order*, to the following:

⁵ Channel 256C can be allotted at Taos at coordinates 36-47-33 and 106-02-49.

⁶ Channel 260C2 can be allotted to Angel Fire at coordinates 36-22-33 and 105-14-12.

⁷ Channel 240A can be allotted at Chama at coordinates 36-54-11 and 106-34-35. See File No. BPH-961115MM.

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7. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the authorization of Station KLAB(FM) IS MODIFIED to specify operation on Channel 256C at Taos, New Mexico, and the authorization of Station KKIT(FM) IS MODIFIED to specify operation on Channel 260C1, at Angel Fire, New Mexico, and the authorization of Station KFLH(FM) IS MODIFIED to specify operation on Channel 240A at Chama, New Mexico, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee/permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For more information regarding this proceeding, contact Victoria M. McCauley, Mass Media Bureau (202) 418-2136.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau